

# **1. Introductory Provisions**

## **1.1 Title**

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This Ordinance shall be officially known and cited as the “Land Development Code of the City of Hickory, North Carolina.” For convenience, it may be referred to simply as the “Land Development Code” or “LDC.”

## **1.2 Authority**

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This Land Development Code is adopted and may be amended from time to time in accordance with the powers granted and limitations imposed by:

- The Charter of the City of Hickory;
- Session Laws of North Carolina, Chapter 477; and
- North Carolina General Statute Chapter 160A 160D.

## **1.3 Applicability and Jurisdiction**

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This Land Development Code shall apply to all development, public and private, throughout the City of Hickory and its extraterritorial planning jurisdiction. No building, structure, land or water shall hereafter be used or occupied, and no building, structure, or part thereof shall hereafter be erected, reconstructed, moved, located or structurally altered except in conformity with this Land Development Code. It is the specific intent of the City Council that all floating structures and buildings, as well as buildings and structures built over or in water, shall meet all the requirements of this Land Development and other applicable ordinances and regulations of the City of Hickory. A map showing the boundaries of the city’s planning jurisdiction shall be available for public inspection in the Planning Department.

## **1.4 Compliance Required**

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It shall be unlawful to conduct, use or occupy any development or construct any structure until: (1) all applicable development review and approval processes have been followed; (2) all applicable approvals have been obtained; and (3) all required permits or authorizations to proceed have been issued.

## **1.5 Interpretation**

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In the interpretation and application of this Land Development Code, all provisions shall be liberally construed in favor of the City of Hickory. The provisions shall not be deemed to limit or repeal any other powers granted under state statutes.

## **1.6 Minimum Requirements**

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The standards of this Land Development Code are minimum requirements. The issuance of any permit, certificate or approval in accordance with the standards and requirements of this Land Development Code shall not relieve the recipient of the responsibility for complying with all other applicable requirements of any other city, county, state or federal agency.

## **1.7 Purpose and Intent**

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This Land Development Code is necessary and adopted to promote the public health, safety, morals, convenience, comfort, amenities, prosperity and general welfare of persons within the planning jurisdiction of the City of Hickory. More specifically, the regulations are intended to:

- Implement the Hickory by Choice 2030 Comprehensive Plan; as well as any adopted small area, neighborhood, or corridor plans.; *(TA 21-01)*
- Preserve and protect land, air, water, environmental resources and property values;
- Promote land use patterns that ensure efficiency in service provision as well as wise use of fiscal resources and government expenditures;
- Regulate the type and intensity of development; and
- Ensure protection from fire, flood and other dangers.

## **1.8 Implementation of the Comprehensive Plan (TA 18-01)**

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This Land Development Code has been prepared in conjunction with the Hickory by Choice 2030 Comprehensive Plan. It is intended that decisions made pursuant to this Land Development Code will implement and be consistent with the Comprehensive Plan.

- 1.8.1** An amendment to the text of this Land Development Code shall be considered consistent with the Hickory by Choice 2030 Comprehensive Plan if it complies with the Plan's goals and policies. A zoning map amendment shall be considered consistent with the Plan if the map amendment is consistent with the "Future Land Use Map" of the Hickory by Choice 2030 Comprehensive Plan. While the City Council reaffirms its commitment that this Land Development Code and any amendments to it be in conformity with the Hickory by Choice 2030 Comprehensive Plan, the City Council hereby expresses its intent that this Land Development Code and any amendments to it may not be challenged on the basis of any alleged nonconformity with the Plan or any other adopted plan of the city.
- 1.8.2** Developments that were legally established under regulations that predate this Land Development Code shall not be deemed inconsistent with the Hickory by Choice 2030 Comprehensive Plan.
- 1.8.3** Amendment of Hickory by Choice 2030 Comprehensive Plan is a legislative decision and shall follow the process mandated for zoning text amendments set forth in Sec. 2.2. *(TA 21-01)*

## **1.9 Zoning Map and Maps Incorporated by Reference**

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- 1.9.1** The location and boundaries of the districts established in this Land Development Code shall be set forth on the Official Zoning Map of the City of Hickory and its extraterritorial jurisdiction, which is incorporated herein by reference. A paper or digital copy of the current and past versions of the Official Zoning Map shall be available at all times for inspection by the general public during regular business hours in the Planning Department office. *(TA 21-01)*
- 1.9.2** If pursuant to the requirements of this Land Development Code, amendments are made to the boundaries reflected on the Official Zoning Map, such amendments shall be entered on the Official Zoning Map by the Planning Director within 30 days following the amendment.
- 1.9.3** Development regulations adopted pursuant to this ordinance may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, or other maps officially adopted or promulgated by State and federal agencies. To the extent such maps are referenced in text of this ordinance or in the Official Zoning Map, the most recent officially adopted version of the maps shall be deemed to be automatically incorporated herein. When zoning district boundaries are based on these maps, those zoning district boundaries shall be automatically amended to remain consistent with changes in the officially promulgated State or federal maps. A copy of the currently effective version of any incorporated map shall be maintained for public inspection in the Planning Department office during regular business hours. *(TA 21-01)*

## **1.10 Manual of Practice (TA 21-01)**

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The City Engineer shall maintain a Manual of Practice. This manual shall be a technical guide providing plans and specifications for typical infrastructure improvements including but not limited to: streets, driveways, street lighting, sidewalks, stormwater management and utility service. All development shall comply with the standards contained therein or with City Engineer approved alternatives prior to issuance of certificate of completion, certificate of occupancy or release of performance guarantees. The City Engineer may amend the Manual of Practice as required to maintain it in conformance with industry best practices. (TA 21-01)

## **1.11 Commentary**

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Commentaries are included in this Land Development Code whenever necessary to clarify the intent of a specific provision. These commentaries are a guide for administrative officials and the public to use in interpreting and understanding the Land Development Code, but they are not themselves ordinances and do not have the effect of law. Should any conflicts between the commentary and the general text of the Land Development Code be found, the general text shall control.

## **1.12 Word Usage and Construction of Language**

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### **1.12.1 Meanings and Intent**

All provisions, terms, phrases and expressions contained in this Land Development Code shall be construed according to the Purpose and Intent set out in Sec. 1.7 and, if defined, to the meaning established in this Land Development Code.

### **1.12.2 Particular and General Provisions**

Particular ordinance language controls over general ordinance language.

### **1.12.3 Buildings and Structures**

A “building,” “structure” or “development” includes any part thereof.

### **1.12.4 “Used For”**

The phrase, “used for” includes “arranged for,” “designed for,” “maintained for,” or “occupied for.”

### **1.12.5 “Person”**

The word “person” includes an individual, a corporation, a partnership, an incorporated association, or any other similar entity.

### **1.12.6 Headings, Illustrations and Text**

In case of any difference of meaning or implication between the text of this Land Development Code and any heading, drawing, table, figure, or illustration, the text shall control.

### **1.12.7 Lists and Examples**

Unless otherwise specifically indicated, lists of items or examples that use terms such as “including,” “such as,” or similar language are intended to provide examples only. They are not to be construed as exhaustive lists of all possibilities.

### **1.12.8 Computation of Time**

References to days are to calendar days unless otherwise stated. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, or holiday observed by the city, the time in which to act shall not run until the

next day that is not a Saturday, Sunday or holiday observed by the city. When the period of time prescribed is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded. A day concludes at the close of the business day (5:00 PM), any materials received after that time shall be considered to be have been received the following City of Hickory business day. Unless otherwise provided, whenever a person has the right or is required to perform an act within a prescribed period after the service of a notice or other notice and the notice or paper is served by mail, 3 days shall be added to the prescribed period.

#### **1.12.9 References to Other Regulations and Documents**

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, that reference shall be construed as referring to the most recent edition of such regulation (as amended), resolution, ordinance, statute, regulation, or document or to the relevant successor document, unless otherwise expressly stated.

#### **1.12.10 Delegation of Authority**

Whenever a provision appears requiring the head of a department or another officer or employee of the city to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate that responsibility to others over whom they have authority.

#### **1.12.11 Technical and Non-technical Terms**

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning. If a technical term is defined in this Land Development Code it shall have the meaning ascribed to it.

#### **1.12.12 Public Officials and Agencies**

All employees, public officials, bodies, and agencies to which references are made are those of the City of Hickory unless otherwise expressly stated.

#### **1.12.13 Mandatory and Discretionary Terms**

The words “shall,” “will,” and “must” are mandatory. The words “may” and “should” are advisory and discretionary terms. When referring to design guidelines, the term “shall” means the guidelines are mandatory and must be applied as written. When referring to design guidelines, the term “should” means that the guidelines are to be applied with flexibility, and that alternative design features are allowed provided the intent of the guideline is met.

#### **1.12.14 Conjunctions**

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows: “and” indicates that all connected items, conditions, provisions, or events apply; and “or” indicates that one or more of the connected items, conditions, provisions, or events apply.

#### **1.12.15 Tenses and Plurals**

Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular includes the plural, and the plural includes the singular.

### **1.13 Conflicting Provisions**

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#### **1.13.1 Conflict with State or Federal Regulations**

If the provisions of this Land Development Code are inconsistent with those of the state or federal government, the more restrictive provision will control, to the extent permitted by law.

#### **1.13.2 Conflict with Other City Regulations**

If the provisions of this Land Development Code are inconsistent with one another, or if they conflict with provisions found in other adopted ordinances or regulations of the city, the more restrictive provision will control.

#### **1.13.3 Conflict with Private Agreements and Covenants**

This Land Development Code is not intended to abrogate, annul, or otherwise interfere with any lawful easement, covenant, or other private agreement or legal relationship otherwise in conformance with it.

### **1.14 Transitional Provisions**

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#### **1.14.1 Violations Continue**

Any violation of the previous zoning, subdivision or sign regulations of the city shall continue to be a violation under this Land Development Code and shall be subject to penalties and enforcement under Chapter 13 unless the use, development, construction or other activity is consistent with the express terms of this Land Development Code, in which case enforcement action shall cease, except to the extent of collecting penalties for violations that occurred before the effective date of this ordinance. The adoption of this Land Development Code shall not affect nor prevent any pending or future prosecution of, or action to abate, violations of the previous City of Hickory Zoning Ordinance or other city land development ordinance that occurred prior to the effective date of this ordinance.

#### **1.14.2 Nonconformities**

Any nonconformity under the previous zoning regulations of the City will also be a legal nonconformity under this Land Development Code, as long as the situation that resulted in the nonconforming status under the previous regulation continues to exist. If, however, a nonconforming situation under a previous regulation becomes conforming because of the adoption of this Land Development Code, or any subsequent amendment to it, then the situation will no longer be considered a nonconformity. A situation that did not constitute a lawful nonconforming situation under the previously adopted zoning ordinance does not achieve lawful nonconforming status under this Land Development Code merely by repeal of the previous zoning ordinance.

#### **1.14.3 Applications Submitted Before the Effective Date of this Ordinance**

Any building, development including planned development preliminary development plans or structure for which a complete application was submitted to the city before the effective date of this ordinance and pending approval on after the effective date of this ordinance may, at the applicant's option, be reviewed wholly under the terms of the city's previous zoning or subdivision regulations. If approved, such projects may be carried out in accordance with the development standards in effect at the time of application. Any re-application for an expired permit shall meet the standards in effect at the time of re-application.

#### **1.14.4 Permits Issued Before the Effective Date of this Ordinance**

Any building, development or structure for which a permit was duly issued before the effective date of this ordinance may be completed in conformance with the issued permit and other applicable permits and conditions, even if such building, development or sign does not fully comply with provisions of this Land Development Code. If construction is not commenced or

completed in accordance with the applicable permit terms, the decision making body may, upon receipt of a written request and payment of the required fee, grant one 6-month time extension for good cause shown. If the building is not commenced or completed within the time allowed under the original permit or any extension granted, then the building, development or structure may be constructed, completed or occupied only in strict compliance with the requirements of this development code. This section applies in addition to any established vested right a person may have, but in no case may a person add time acquired pursuant to this section to time permitted by virtue of a vested right or vice versa.

#### **1.14.5 Plats Approved Before the Effective Date of this Ordinance**

Any subdivision for which a preliminary plat was approved before the effective date of this ordinance may be recorded in accordance with the approved plat and other applicable permits and conditions, even if the subdivision does not fully comply with the provisions of this Land Development Code. If work on the subdivision does not begin within time requirements established by prior ordinance or resolution or within any schedule included in the approval of the plat, the decision making body may, upon receipt of a written request and payment of the required fee, grant one 6-month time extension for good cause shown. If work on the subdivision does not begin within the time required under the original approval or any extension that may be granted, then the final plat may be approved and recorded and buildings therein constructed and used only in strict compliance with the requirements of this Land Development Code. This section applies in addition to any established vested right a person may have, but in no case may a person add time acquired pursuant to this section to time permitted by virtue of a vested right or vice versa.

### **1.15 Severability**

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- 1.15.1** If any Court of competent jurisdiction rules any provision of this Land Development Code invalid, that ruling shall not affect any Land Development Code provision that is not specifically included in the judgment.
- 1.15.2** If any Court of competent jurisdiction rules invalid the application of any provision of this Land Development Code to a particular property, building, or other structure, or use, that ruling shall not affect the application of the Land Development Code provisions to any property, building, other structure, or use not specifically included in the judgment.